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DEMOCRACY AND DISSENT: STRAUSS, ARENDT, AND VOEGELIN IN AMERICA

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During the 1930s, American democratic government underwent a paradigmatic transformation.¹ From the framing through the 1920s, the United States operated as a republican democracy. Citizens and elected officials were supposed to be virtuous: in the political realm, they were to pursue the common good or public welfare rather than their own "partial or private interests."² Intellectually, republican democracy had premodern roots stretching back to antiquity.³ As such, republican democratic theorists often conceptualized the common good in objectivist terms, as if there existed a distinct good that could be clearly ascertained.⁴ Equally important, for at least a century, republican democracy seemed to fit the agrarian, rural, and relatively homogenous American society. Thomas Jefferson, for one, insisted that the agrarian economy and widespread rural land ownership promoted a virtuous commitment to the common good.⁵ And given that, in the nation's early decades, an overwhelming number of Americans were Protestants who traced their ancestry to Western or Northern Europe, the people seemed sufficiently homogeneous to join together in the pursuit of the common good.⁶

Of course, some Americans did not fit the mold. Not all were white Protestant Anglo-Saxons. Exclusion, however, preserved at least a surface homogeneity. According to republican democratic theory, non-virtuous individuals (or non-virtuous societal groups) would not be will-

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1. See STEPHEN M. FELDMAN, *FREE EXPRESSION AND DEMOCRACY IN AMERICA: A HISTORY* 291–382 (2008) (discussing extensively a transition from republican to pluralist democracy).

2. See GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787*, at 59 (1969); see also, e.g., *VIRGINIA BILL OF RIGHTS* (1776), reprinted in 2 BENJAMIN PERLEY POORE, *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE UNITED STATES* 1908 (1877) (emphasizing government for "the common benefit").

3. See ARISTOTLE, *THE POLITICS* (Carnes Lord trans., 1984).

4. See J.G.A. POCOCK, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* 21–22 (1975); JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM, AND DEMOCRACY* 250 (2d ed. 1942).

5. Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), reprinted in 2 *GREAT ISSUES IN AMERICAN HISTORY: FROM RECONSTRUCTION TO THE PRESENT DAY* 112, 115 (Richard Hofstadter ed., 1982); see also EDMUND S. MORGAN, *THE BIRTH OF THE REPUBLIC, 1763–89*, at 7 (2d ed. 1977) (emphasizing importance of land ownership).

6. See Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* 219 (1986); STEPHEN M. FELDMAN, *PLEASE DON'T WISH ME A MERRY CHRISTMAS: A CRITICAL HISTORY OF THE SEPARATION OF CHURCH AND STATE* 161–68 (1997), *THE FEDERALIST* NO. 2, at 38 (John Jay) (Clinton Rossiter ed., 1961) (emphasizing the homogeneity of the American people).

ing to forgo the pursuit of their own private interests. Instead, they would form factions bent on corrupting republican democratic government.⁷ Thus, an alleged lack of civic virtue could justify the forced exclusion of a group from the polity. On this pretext, African Americans, Irish-Catholic immigrants, women, and other peripheral groups were precluded from participating in republican democracy for much of American history.⁸ Typically, then, particular conceptions of virtue and the common good mirrored mainstream white Protestant values and interests.

Over time, a variety of forces strained the republican democratic regime, especially in the late-nineteenth and early-twentieth centuries.⁹ These forces, including industrialization, urbanization, and immigration, redounded upon each other, their effects rippling through society. Yet, republican democracy proved flexible and resilient. Through the nineteenth century and into the 1920s, virtue and the common good remained the overarching principles of government, though their specific meanings changed in response to the cultural, social, and economic pressures.¹⁰ Eventually, however, in the early 1930s, the republican democratic regime collapsed and a new one—pluralist democratic—supplanted it. By this time, the reality was that the American population was more heterogeneous than ever before; the majority of Americans lived in cities, and more Americans were working for wages in factories than working their own farmland.¹¹

Unlike republican democracy, the intellectual furniture for pluralist democracy was thoroughly modern. Theorists who conceptualized the new democracy in the late 1930s and 1940s were committed to historicism, ethical relativism, and social science empiricism. From the historicist perspective, history demonstrated that social, cultural, and political arrangements were contingent and changeable and that human inventiveness could produce endless (though not inevitable) progress.¹² Empiricists believed that the path to knowledge lay in experience: the study of

7. THE FEDERALIST NO. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961).

8. Stephen M. Feldman, *The Theory and Politics of First-Amendment Protections: Why Does the Supreme Court Favor Free Expression Over Religious Freedom?*, 8 U. PA. J. CONST. L. 431, 434–35 (2006).

9. Feldman, *supra* note 1, at 166–97 (discussing in greater detail the development and effects of industrialization, urbanization, and immigration).

10. For example, political parties were initially considered to be illegitimate factions, see STANLEY ELKINS & ERIC MCKITRICK, *THE AGE OF FEDERALISM* 596–617 (1993), but they became an accepted republican democratic institution in the 1820s and 1830s. See EDWARD PESSEN, *JACKSONIAN AMERICA: SOCIETY, PERSONALITY, AND POLITICS* 197–232 (rev. ed. 1985); HARRY L. WATSON, *LIBERTY AND POWER: THE POLITICS OF JACKSONIAN AMERICA* 171–74 (1990).

11. See THE STATISTICAL HISTORY OF THE UNITED STATES FROM COLONIAL TIMES TO THE PRESENT 409 (1965) (Table: Manufactures Summary: 1849 to 1954) (providing statistical measurements reflecting increasing industrialization); *id.* at 14 (Table: Population in Urban and Rural Territory) (providing statistics showing population from rural to urban areas).

12. See STEPHEN M. FELDMAN, *AMERICAN LEGAL THOUGHT FROM PREMODERNISM TO POSTMODERNISM: AN INTELLECTUAL VOYAGE* 19, 84–85 (2000) [hereinafter FELDMAN, *VOYAGE*]; G. Edward White, *The Arrival of History in Constitutional Scholarship*, 88 VA. L. REV. 485, 506 (2002).

external reality. Social science empiricism thus entailed the observation of human behavior, generalizations describing such behavior, and predictions about future behavior. Moreover, among intellectuals, the commitment to empiricism engendered an ineluctable acceptance of ethical relativism; facts and values were distinct. If knowledge must be grounded on experience, then ethical values seemingly could not be verified. Individuals could and did assert values, but scientists could not empirically test the validity of those values.¹³

These modern intellectual components—historicism, ethical relativism, and social science empiricism—were manifested in political realities. In his New Deal, Franklin Roosevelt pushed for progress (in accordance with historicism), for immediate action guided by empirical experts: he relied on legal and social-science experts to shape and administer legislation that responded to the economic needs of a multitude of American constituencies. The New Dealers passed fifteen legislative acts during the first 100 days of Roosevelt's first term, and they continued enacting legislation in accordance with the needs and interests of the American people fighting a depression.¹⁴ Instead of dismissing the preferences and values of immigrants, indigents, religious minorities, and other peripheral groups as being non-virtuous, instead of denigrating their desires and goals as contravening the common good, FDR and his New Deal colleagues sought to incorporate these groups into the polity and to satisfy their interests. As one of FDR's close advisers, Rex Tugwell, said, "[T]he New Deal is attempting to do nothing to people, and does not seek at all to alter their way of life, their wants and desires."¹⁵ Consequently, FDR led the nation toward a more open and inclusive form of democracy. Mainstream and old-stock Protestant values, long the foundation for the ideals of virtue and the common good, were now to be balanced with the values of other Americans who constituted the demographically diverse population. No single set of cultural values was authoritative. Consistent with ethical relativism, Roosevelt and the New Dealers considered all values and interests, or at least a plurality of such values and interests.¹⁶

13. See WALTER LIPPMANN, A PREFACE TO MORALS 3–4, 8 (1929) (arguing that individuals admitted that their own moral codes lacked foundations).

14. E.g., Social Security Act, Pub. L. No. 74-271, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. ch. 7 (2006)); National Labor Relations Act, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151–169 (2006)).

15. WILLIAM E. LEUCHTENBURG, FRANKLIN D. ROOSEVELT AND THE NEW DEAL 339 (1963) (quoting REX TUGWELL, THE BATTLE FOR DEMOCRACY 319 (1935)) (internal quotation marks omitted).

16. E.g., Franklin D. Roosevelt, *Commonwealth Club Speech* (Sept. 23, 1932), in 3 GREAT ISSUES IN AMERICAN HISTORY: FROM RECONSTRUCTION TO THE PRESENT DAY, 1864–1981, at 335, 341–42 (Richard Hofstadter & Beatrice Hofstadter eds., rev. ed. 1982). Roosevelt was far more solicitous of African American interests than any previous president, yet he often sacrificed black interests and values so as to keep white Southerners aligned with the Democratic party. See Feldman, *supra* note 1, at 327–28. Also, Roosevelt eventually broke with and became antagonistic toward big business. *Id.* at 318–19, 324.

Pluralist democracy thus revolved around the assertion of interests and values by sundry individuals and groups.¹⁷ The pursuit of self-interest no longer amounted to corruption; rather, it defined the nature of (pluralist) democracy. The crux of the new democracy was participation in the political process: to express one's values and interests through the appropriate channels; to have governmental officials listen to those expressions of values and interests; and to have the government, acting through experts, fulfill one's desires in a reasonable number of instances.¹⁸ According to pluralist democratic theorists, the only way to determine public values and goals was through a process of "free competition [among] interest groups."¹⁹ By "composing or compromising" their different values and interests,²⁰ the "competing groups [would] coordinate their aims in programs they can all support."²¹ Legislative decisions therefore turned on negotiation, persuasion, and the exertion of pressure through the normal procedures of democratic government.²² Process rather than substance (such as the substance of the common good) determined the legitimacy of governmental actions.²³

Pluralist democracy achieved hegemony during the post-World War II era as the correct theory and practice of government, but it did not go unchallenged. European émigrés such as Leo Strauss, Hannah Arendt, and Eric Voegelin, all of whom had escaped from Nazi Germany in the 1930s, raised the most persistent oppositional views.²⁴ By the end of the 1940s, Strauss, Arendt, and Voegelin were established political philosophers within the American intellectual community. Thus, they experienced the rise and entrenchment of pluralist democracy from both an insider perspective, living and working in the United States, and an outsider perspective, having matured intellectually in Europe. While they all appreciated the American constitutional system—the United States, after all, had provided them with refuge—they could not accept unbridled celebrations of American democracy.²⁵ While in Europe, they had not

17. See LIZABETH COHEN, *MAKING A NEW DEAL: INDUSTRIAL WORKERS IN CHICAGO, 1919–1939*, at 254–57, 362–66 (1990) (discussing the transformation of ethnic urbanites into active participants on the national political stage).

18. John Dewey was an early pluralist democratic theorist. See, e.g., JOHN DEWEY, *FREEDOM AND CULTURE* 176 (1939) (discussing the "methods" of democracy).

19. WILFRED E. BINKLEY & MALCOLM C. MOOS, *A GRAMMAR OF AMERICAN POLITICS* 9 (1949).

20. *Id.*

21. *Id.* at 8.

22. *Id.* at 10–11.

23. Robert A. Dahl provided the most comprehensive description of the pluralist democratic process. See ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 83, 106, 109–11 (1989); ROBERT A. DAHL, *A PREFACE TO DEMOCRATIC THEORY* 67–71 (1956).

24. See JOHN G. GUNNELL, *THE DESCENT OF POLITICAL THEORY* 194–98 (1993) (discussing the arrival of the émigrés).

25. Strauss's writings include: LEO STRAUSS, *LIBERALISM ANCIENT AND MODERN* (1968) [hereinafter STRAUSS, *LIBERALISM*]; LEO STRAUSS, *THE CITY AND MAN* (1964) [hereinafter STRAUSS, *CITY*]; LEO STRAUSS, *WHAT IS POLITICAL PHILOSOPHY* (1959) [hereinafter STRAUSS, *POLITICAL PHILOSOPHY*]; LEO STRAUSS, *NATURAL RIGHT AND HISTORY* (1953) [hereinafter

only witnessed the collapse of the democratic Weimar Republic into Nazi totalitarianism, they had suffered personal hardships and dislocations because of the Nazi perversions of the state. Strauss and Arendt fled Germany because they were Jews, while Voegelin left because he had published books contravening Nazi race ideology. From their vantage, American democracy was too fragile to leave unexamined.²⁶

Part I of this Article explores the views of Strauss, Arendt, and Voegelin as they dissented from pluralist democracy.²⁷ Part II discusses their influences on politics, political theory, and law.²⁸ One caveat might clarify the goal of this Article. The transition from republican to pluralist democracy was unquestionably momentous, but whether it should be characterized as revolutionary is arguable, turning more on one's definition of revolution than the nature of the transition itself. If one maintains that a revolution must be speedy or sudden, then this transition might not qualify. It started with a buildup of economic, cultural, and social pressures in the late-nineteenth century and lasted at least through the decade of the 1930s.²⁹ One can reasonably argue that the Supreme Court did not accept pluralist democracy until 1937.³⁰ Numerous commentators,

STRAUSS, NATURAL]; LEO STRAUSS, *THE POLITICAL PHILOSOPHY OF HOBBS* (Elsa M. Sinclair trans., 1952) [hereinafter STRAUSS, HOBBS]. Arendt's writings include: HANNAH ARENDT, *ON REVOLUTION* (Penguin Books 1977) (1963) [hereinafter ARENDT, REVOLUTION]; HANNAH ARENDT, *THE HUMAN CONDITION* (1958) [hereinafter ARENDT, HUMAN]; HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* (1973 ed. 1951) [hereinafter ARENDT, ORIGINS]. Voegelin's writings include: ERIC VOEGELIN, *ORDER AND HISTORY: ISRAEL AND REVELATION* (Maurice P. Hogan, ed., Univ. of Mo. Press 2001) (1956). [hereinafter VOEGELIN, ORDER]; ERIC VOEGELIN, *THE NEW SCIENCE OF POLITICS* (1952) [hereinafter VOEGELIN, NEW]. Books and essays discussing one or more of the émigrés include: BARRY COOPER, *ERIC VOEGELIN AND THE FOUNDATIONS OF MODERN POLITICAL SCIENCE* (1999); SHADIA B. DRURY, *LEO STRAUSS AND THE AMERICAN RIGHT* (1997); MICHAEL P. FEDERICI, *ERIC VOEGELIN* (2002); GEORGE KATEB, *HANNAH ARENDT* (1983); TED V. MCALLISTER, *REVOLT AGAINST MODERNITY* (1996); JOHN MCGOWAN, *HANNAH ARENDT* (1998); GEORGE H. NASH, *THE CONSERVATIVE INTELLECTUAL MOVEMENT IN AMERICA: SINCE 1945* (2008 ed. 1976); THOMAS L. PANGLE, *LEO STRAUSS* (2006); STEVEN B. SMITH, *READING LEO STRAUSS* (2006); DANIEL TANGUAY, *LEO STRAUSS* (Christopher Nadon trans., 2007); DANA R. VILLA, *POLITICS, PHILOSOPHY, TERROR* (1999) [hereinafter VILLA, POLITICS]; DANA R. VILLA, *ARENDT AND HEIDEGGER* (1996) [hereinafter VILLA, ARENDT]; RICHARD J. BERNSTEIN, *Judging—the Actor and the Spectator*, in *PHILOSOPHICAL PROFILES* 221 (1986) [hereinafter BERNSTEIN, *Judging*]; RICHARD J. BERNSTEIN, *Rethinking the Social and the Political*, in *PHILOSOPHICAL PROFILES*, *supra*, at 238 [hereinafter BERNSTEIN, *Rethinking*]; George Kateb, *The Questionable Influence of Arendt (and Strauss)*, in HANNAH ARENDT AND LEO STRAUSS 29 (Peter Graf Kielmansegg et al. eds., 1997) [hereinafter Kateb, *Questionable*]; Stephen A. McKnight, *Voegelin's New Science of History*, in ERIC VOEGELIN'S SIGNIFICANCE FOR THE MODERN MIND 46 (Ellis Sandoz ed., 1991); Nathan Tarcov & Thomas L. Pangle, *Leo Strauss and the History of Political Philosophy*, in *HISTORY OF POLITICAL PHILOSOPHY* 907 (Leo Strauss & Joseph Cropsey eds., 3d ed. 1987).

26. See Kateb, *Questionable*, *supra* note 25, at 29 (emphasizing that Strauss and Arendt were skeptical of modern democracy).

27. See *infra* text accompanying notes 32–106.

28. See *infra* text accompanying notes 107–240.

29. Feldman, *supra* note 1, at 153–208, 291–348 (discussing pressures leading to breakdown of republican democracy).

30. See *id.* at 349–82 (discussing the Justices' acceptance of pluralist democracy).

though, have referred to the transition as revolutionary.³¹ For purposes of this Article, the designation of the transition from republican to pluralist democracy is irrelevant. It is crucial, however, to comprehend the enormous transformation that American government underwent during this time, shifting from one paradigm of democracy to another. This Article is about those contemporaries who experienced and perceived the paradigm change but nonetheless opposed it. Given how Strauss, Arendt, and Voegelin will influence subsequent political and theoretical developments—by the late-twentieth century, for instance, Strauss will be known as the godfather of neoconservatism—their contemporaneous reactions to the emergence of pluralist democracy provide an unparalleled and invaluable glimpse inside a paradigm shift central to the American future.

I. THE ÉMIGRÉ DISSENTERS

A. Leo Strauss

Strauss launched a sustained critique of the interrelated intellectual components of modernity that supported pluralist democracy. Historicism, Strauss explained, “seems to show that all human thought is dependent on unique historical contexts that are preceded by more or less different contexts and that emerge out of their antecedents in a fundamentally unpredictable way.”³² Put in different words, historicism stresses the (historical) context of all perceptions and experiences. With everything becoming contextual and therefore contingent, historicism allows us to look constantly toward the future.³³ Awareness of the past can liberate us from that past. If we know when and why an institution—let’s say a particular common law rule of property—first developed, then we can more readily choose to modify or abandon that institution.³⁴ To be sure, we are not guaranteed to progress in the future, epoch by epoch, but we can nonetheless aim “toward ever greater prosperity . . . enabl[ing] everyone to share in all the advantages of society or life.”³⁵

Yet, Strauss warned, historicism undermines the very possibility of knowledge and understanding. For example, historicism leads us to conclude that we cannot specify the content of justice because it appears to

31. See, e.g., MAXWELL BLOOMFIELD, *PEACEFUL REVOLUTION: CONSTITUTIONAL CHANGE AND AMERICAN CULTURE FROM PROGRESSIVISM TO THE NEW DEAL* 124–64 (2000) (referring to New Deal as constitutional revolution).

32. STRAUSS, *NATURAL*, *supra* note 25, at 19.

33. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 59.

34. *Id.* at 67.

35. STRAUSS, *CITY*, *supra* note 25, at 4. Strauss continued:

The progress toward ever greater prosperity would thus become, or render possible, the progress toward ever greater freedom and justice. This progress would necessarily be the progress toward a society embracing equally all human beings: a universal league of free and equal nations, each nation consisting of free and equal men and women.

Id.

vary from society to society, from context to context.³⁶ Justice means one thing in the United States, another thing in China, and another thing in Egypt—or so the historicist claims.³⁷ More broadly, “[a]ll understanding, all knowledge . . . , presupposes a frame of reference . . . , a comprehensive view within which understanding and knowing take place.”³⁸ Thomas Kuhn, the renowned historian and philosopher of science, would soon refer to this overarching frame of reference as a paradigm.³⁹ The problem with this outlook, Strauss argued, is that “[t]he comprehensive view of the whole [or, in other words, a paradigm] cannot be validated by reasoning, since it is the basis of all reasoning.”⁴⁰ We always must choose among competing viewpoints, but we are left “without any rational guidance.”⁴¹ Each viewpoint is “as legitimate as any other.”⁴² But then, Strauss asked, is not historicism “self-contradictory?”⁴³ How can historicism claim that it is a valid viewpoint itself?⁴⁴ And even more important, when humanity is ostensibly freed of all “permanencies,”⁴⁵ such as knowing “the distinction between the noble and the base,”⁴⁶ then we are too apt to spiral into terror, as happened with Hitler and the Nazis. “It was the contempt for these permanencies which permitted the most radical historicist in 1933 [to gain power].”⁴⁷

Strauss attacked the pretensions of modern social science with equal vigor. Social scientists claim that facts and values must be separated:⁴⁸ “the Is and the Ought” cannot be joined.⁴⁹ They posit that all knowledge must be empirical, based on experience of facts, and that therefore social science must be “value-free” and “ethically neutral.”⁵⁰ But to Strauss, modern social science is wrong-headed on several counts. Most simply, he argued that value-free social science is impossible. Values seep into

36. See STRAUSS, *NATURAL*, *supra* note 25, at 97 (explaining how the conventionalist position undermines claims of justice).

37. See STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 63 (arguing that historicism ties political philosophies to specific places and times).

38. STRAUSS, *NATURAL*, *supra* note 25, at 26.

39. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 1–9 (2d ed. 1970).

40. STRAUSS, *NATURAL*, *supra* note 25, at 27.

41. *Id.*

42. *Id.*

43. *Id.* at 25.

44. *Id.*

45. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 26.

46. *Id.*

47. *Id.* at 27.

48. STRAUSS, *NATURAL*, *supra* note 25, at 39–40. Strauss focused his analysis, in particular, on Max Weber’s explication of social science. *Id.* at 36–78; see also STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 23 (tracing the desire for value-free social science to Weber). For Weber’s views, see MAX WEBER, *THE METHODOLOGY OF THE SOCIAL SCIENCES* (Edward A. Shils & Henry A. Finch trans., 1949); MAX WEBER, *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* (H. H. Gerth & C. Wright Mills trans., 1946); Stephen M. Feldman, *An Interpretation of Max Weber’s Theory of Law: Metaphysics, Economics, and the Iron Cage of Constitutional Law*, 16 *LAW & SOC. INQUIRY* 205 (1991).

49. STRAUSS, *NATURAL*, *supra* note 25, at 41.

50. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 19; STRAUSS, *NATURAL*, *supra* note 25, at 16–17, 40–41.

any social or political analysis in numerous ways, from the choice of research questions to the definition of terms.⁵¹ At a deeper level, to insist on value-free social science, including political science, would be to render it meaningless: "It is impossible to study social phenomena, i.e., all important social phenomena, without making value judgments. . . . A man who refuses to distinguish between great statesmen, mediocrities, and insane impostors may be a good bibliographer; he cannot say anything relevant about politics and political history."⁵²

Even if value-free social science were possible, the single-minded focus on empirical research, on facts, would necessarily preclude any knowledge of values and ends. From the modern standpoint, values, which are the sources of our goals or ends, are not subject to scientific (empirical) determination and therefore are not knowable.⁵³ Modern social science leads us, then, to ethical relativism.

[T]here cannot be any genuine knowledge of the Ought. [The modern social scientist] denied to man any science, empirical or rational, any knowledge, scientific or philosophic, of the true value system: the true value system does not exist; there is a variety of values which are of the same rank, whose demands conflict with one another, and whose conflict cannot be solved by human reason. Social science or social philosophy can do no more than clarify that conflict and all its implications; the solution has to be left to the free, non-rational decision of each individual.⁵⁴

Modern social science, with its desire to be empirical and "neutral in the conflict between good and evil,"⁵⁵ relegates us to a radical and irrational individualism—where each person acts on arbitrary preferences—and ultimately, to nihilism.⁵⁶ Not only must we "recognize all preferences or all 'civilizations' as equally respectable,"⁵⁷ we must accept that "[i]f our principles have no other support than our blind preferences, everything a man is willing to dare will be permissible."⁵⁸

Strauss, in sum, concluded that modernity is imploding: its own premises inevitably cause the edifice of modernity to collapse upon itself. But as Strauss would insist, the rise of the Nazis and the ensuing Holocaust were not wrong merely from a relative perspective. According to Strauss, we must have more than irrational individual preferences and culturally relative values if we are to avoid sliding toward nihilism and

51. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 21–25.

52. *Id.* at 21.

53. STRAUSS, *NATURAL*, *supra* note 25, at 40–41.

54. *Id.* at 41–42.

55. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 18.

56. STRAUSS, *NATURAL*, *supra* note 25, at 4–5; STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 18–19.

57. STRAUSS, *NATURAL*, *supra* note 25, at 5.

58. *Id.* at 4–5.

accepting genocide. And as modernity goes, Strauss added, so goes pluralist democracy. Built on the modernist premises of historicism, empiricism, and relativism, not only is pluralist democracy indefensible from a Straussian standpoint, but it also perches us precariously on the edge of a moral abyss.⁵⁹ But then what should we do? Strauss did not want to repudiate democracy, though he found its current instantiation in the United States to be frail and dangerous.⁶⁰ To a degree, he sought to modify and therefore save democracy. Strauss, it seems, wanted answers. After all, Strauss criticized modernity for leaving us with only contingencies, for undermining the certainty of ostensible answers. But what solutions did Strauss propose in response to the problem of democracy and the crisis of modernity?

Unfortunately, at this very point, Strauss's writings became far murkier. He turned to philosophy—specifically classical political philosophy—because, he argued, it could lead us from opinion to truth.⁶¹ Strauss feared that the methods of modern social science structure our understandings of politics and government by injecting the fact-value dichotomy.⁶² To avoid being led astray in this manner, we must return to a “pre-scientific understanding” of politics⁶³—“a coherent and comprehensive understanding of what is frequently called the common sense view of political things.”⁶⁴ And ancient or classical philosophy can provide us with that pre-scientific or “original form of political science.”⁶⁵ Yet, Strauss acknowledged that classical political philosophy cannot provide us with clear and direct access to solutions for our current difficulties.⁶⁶ We cannot solve our problems by pretending to live in a Greek polis; a global economy, nuclear weapons, and the proliferation of nation-states present us with unique political dilemmas. Even so, we must quest after “universal knowledge” of the truth,⁶⁷ quest for answers to our dilemmas, and ancient philosophy might guide us on our journey.⁶⁸ But

59. E.g., STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 37–38; see STRAUSS, *LIBERALISM*, *supra* note 25, at 3–25 (discussing liberal education); PANGLE, *supra* note 25, at 77–78 (discussing Strauss's emphasis on the degeneration of democracy); TARCOV & PANGLE, *supra* note 25, at 927–30 (discussing Strauss's criticisms of liberal democracy).

60. “We are not permitted to be flatterers of democracy precisely because we are friends and allies of liberal democracy.” STRAUSS, *LIBERALISM*, *supra* note 25, at 24; see SMITH, *supra* note 25, at ix (describing Strauss as friend to democracy); TARCOV & PANGLE, *supra* note 25, at 909 (noting that Strauss viewed himself to be a friend to liberal democracy). *But see* DRURY, *supra* note 25, at 133–35 (arguing that Strauss was hostile to democracy).

61. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 11–12, 66.

62. STRAUSS, *CITY*, *supra* note 25, at 11–12.

63. *Id.* at 11.

64. *Id.*

65. *Id.* at 12.

66. *Id.* at 11; PANGLE, *supra* note 25, at 26–28; TARCOV & PANGLE, *supra* note 25, at 918–19.

67. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 11.

68. STRAUSS, *CITY*, *supra* note 25, at 11; PANGLE, *supra* note 25, at 76–77; TARCOV & PANGLE, *supra* note 25, at 910–13.

the end of the quest might never be reached—it might never become visible.⁶⁹

In his quest for truth, Strauss insisted that we consider whether the ancients had correctly linked political philosophy with natural right.⁷⁰ To explore this possibility, Strauss distinguished between the classical (or ancient) and modern concepts of natural right. According to the ancients, natural right could be comprehended only in connection “with a teleological view of the universe,” Strauss explained.⁷¹ “All natural beings have a natural end, a natural destiny, which determines what kind of operation is good for them.”⁷² Natural right, then, arose from the inherent end or purpose of a political regime. That is, “classic natural right doctrine . . . is identical with the doctrine of the best regime.”⁷³ The philosophical quest for natural right amounts to a search for “the perfect moral order.”⁷⁴ Strauss left ambiguous, it should be noted, the precise relationship between classical (or ancient) natural right and classical (or ancient) natural law. Sometimes he appeared to distinguish between natural right and natural law, but other times he appeared to use the terms interchangeably.⁷⁵ In fact, when Strauss equated classical natural right with the best regime or perfect order, he defined natural right in a manner that resonated closely with commonplace definitions of natural law.⁷⁶ Strauss himself referred to natural law as “an objective order.”⁷⁷ That societal order or best regime, Strauss suggested, entailed “doctrines [that] taught the duties of man.”⁷⁸ Thus, at one point, Strauss wrote: “Traditional natural law is primarily and mainly an objective ‘rule and measure’, a binding order prior to, and independent of, the human will.”⁷⁹

Regardless, Strauss unequivocally stressed a break between classical natural right (and natural law) and modern natural right (and natural

69. Straussians might claim that Strauss engaged in esoteric writing. He distinguished the exoteric—political writings or teachings that were useful and palatable in the philosopher’s particular context—from the esoteric—political writings or teachings that were aimed for universal truths but that were left more obscure. STRAUSS, *POLITICAL PHILOSOPHY*, *supra* note 25, at 226–29; PANGLE, *supra* note 25, at 56–65; TARCOV & PANGLE, *supra* note 25, at 914.

70. See STRAUSS, *NATURAL*, *supra* note 25, at 81–89 (discussing the origin of natural right).

71. *Id.* at 7.

72. *Id.*

73. *Id.* at 144.

74. *Id.*; see MCALLISTER, *supra* note 25, at 30 (explaining that Strauss characterized natural right as referring “to proper governing”); TANGUAY, *supra* note 25, at 118 (explaining that Strauss’s notion of natural right focused on the best regime).

75. For instance, when discussing the relationship between religion and the best regime, Strauss wrote that “natural right or, rather, natural law becomes independent of the best regime and takes precedence over it.” STRAUSS, *NATURAL*, *supra* note 25, at 144. *But see* TANGUAY, *supra* note 25, at 118–19 (distinguishing between natural right and natural law).

76. See, e.g., FELDMAN, *VOYAGE*, *supra* note 12, at 85–89 (describing how proslavery advocates argued for a natural order in society).

77. STRAUSS, *HOBBS*, *supra* note 25, at xii. Strauss also wrote: “According to the classics, the best constitution is a contrivance of reason. . . . It is in accordance with nature, or it is a natural order.” STRAUSS, *NATURAL*, *supra* note 25, at 314.

78. STRAUSS, *NATURAL*, *supra* note 25, at 182.

79. STRAUSS, *HOBBS*, *supra* note 25, at xi.

law).⁸⁰ To be sure, Strauss's historical narrative is idiosyncratic: traditional accounts tend to describe a logical movement from premodernity to modernity that links the ancient and modern notions of natural right (passing relatively smoothly from antiquity through Christianity and into secularity).⁸¹ But Strauss emphasized discontinuity: the sharp distinction between the ancients and the moderns helped explain, according to Strauss, the fragility of modern democracy. Machiavelli initiated modern political theory by rejecting the ideals of Plato and Aristotle for the nitty-gritty of *realpolitik*. Instead of describing the just or perfect republic, Machiavellian political theory guides the ruler who must maneuver through the pitfalls of reality.⁸² Strauss argued, then, that Hobbes sought to retain Machiavelli's realism while reintroducing "moral principles" into politics—reintroducing, that is, natural right (and natural law).⁸³ To do so, Hobbes focused on "the fear of death, and, more particularly, the fear of violent death at the hands of others."⁸⁴ In Hobbesian political theory, as interpreted by Strauss, "[d]eath takes the place of the *telos*,"⁸⁵ and "natural law must be deduced from the desire for self-preservation."⁸⁶ Thus, unlike in classical political philosophy where natural right starts with the best political regime, which then engenders certain duties and responsibilities, Hobbes's modern political theory starts from an assertion of individual natural right—"from an absolutely justified subjective claim which, far from being dependent on any previous law, order, or obligation, is itself the origin of all law, order, or obligation."⁸⁷ Consequently, Hobbes concluded that "[t]he state has the function, not of producing or promoting a virtuous life, but of safeguarding the natural right of each."⁸⁸

80. *Id.* at xi–xii; STRAUSS, *NATURAL*, *supra* note 25, at 120.

81. TANGUAY, *supra* note 25, at 102–03, 118.

82. STRAUSS, *NATURAL*, *supra* note 25, at 177–79; MCALLISTER, *supra* note 25, at 154–56; e.g., NICCOLO MACHIAVELLI, *THE PRINCE* (Luigi Ricci trans.), *reprinted in* *THE PRINCE AND THE DISCOURSES I* (Modern Library ed. 1950); NICCOLO MACHIAVELLI, *DISCOURSES ON THE FIRST TEN BOOKS OF TITUS LIVIUS* (Christian E. Detmold trans.), *reprinted in* *THE PRINCE AND THE DISCOURSES*, *supra*, 99. While Aristotelian virtue strove for human excellence, Machiavellian virtue strove for political usefulness, for the preservation of the political community (or republic) in a treacherous world. FELDMAN, *VOYAGE*, *supra* note 12, at 12, 14–15; TARCOV & PANGLE, *supra* note 25, at 916–17.

83. STRAUSS, *NATURAL*, *supra* note 25, at 179; e.g., THOMAS HOBBS, *LEVIATHAN* (C.B. Macpherson ed., 1968).

84. STRAUSS, *NATURAL*, *supra* note 25, at 180.

85. *Id.* at 181.

86. *Id.*

87. STRAUSS, *HOBBS*, *supra* note 25, at xii. "Traditional natural law is primarily and mainly an objective 'rule and measure', a binding order prior to, and independent of, the human will, while modern natural law is, or tends to be, primarily and mainly a series of 'rights', of subjective claims, originating in the human will." *Id.* at xi–xii; see STRAUSS, *NATURAL*, *supra* note 25, at 181 ("[T]he fundamental moral fact is not a duty but a right . . .").

88. STRAUSS, *NATURAL*, *supra* note 25, at 181. "Hobbes jettisoned the entire tradition of political philosophy oriented toward human excellence, thus freeing the state from any obligation other than safeguarding individual natural rights." MCALLISTER, *supra* note 25, at 157.

Even further, according to Strauss, not only did the early moderns, like Hobbes, transform (and diminish) natural right, the later moderns repudiated it altogether.⁸⁹ Jeremy Bentham, for one, is famous for denigrating "[n]atural rights [as] simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts."⁹⁰ Bentham's disciple, John Austin, rejected the concept of natural law as "ambiguous and misleading."⁹¹ Indeed, many critics insisted that widespread disagreements about the content of natural right demonstrated that it was inherently and hopelessly ambiguous.⁹² In the United States, the Framers' generation had been firmly committed to natural right (and natural law), yet after the Civil War, numerous American jurists repudiated it.⁹³ According to jurist and scholar Oliver Wendell Holmes, Jr., natural-law jurists suffered from a "naïve state of mind."⁹⁴ Modernists stopped searching for universals (rights and laws) in nature and instead focused on historical changes, individual claims of right, and sovereign assertions of law.⁹⁵

When Strauss considered whether the ancients had correctly linked political philosophy with natural right, he emphasized that the mere disagreement among individuals and societies about the content of natural right does not logically necessitate its repudiation.⁹⁶ Because the rejection of natural right ultimately leads, he argued, to the monumental modernist problems of historicism and relativism, we should demand stronger proof before jettisoning the possibility of natural right, and from Strauss's perspective, such proof is not forthcoming.⁹⁷ Not only did Strauss, then, want to contemplate the truth and implications of natural right, he reconsidered the fundamental republican democratic principles. In opposition to pluralist democracy and its countenanced pursuit of self-

89. STRAUSS, NATURAL, *supra* note 25, at 298–99 (explaining how Burke does not begin from natural right); see MCALLISTER, *supra* note 25, at 30 (explaining that Strauss traced the development of modernity "until, finally, the entire concept of nature had dissolved as a useful assumption."). Thus, Strauss wrote: "The problem of natural right is today a matter of recollection rather than of actual knowledge." STRAUSS, NATURAL, *supra* note 25, at 7.

90. JEREMY BENTHAM, *Anarchical Fallacies*, reprinted in 2 THE WORKS OF JEREMY BENTHAM 489, 501 (John Bowring ed., 1843).

91. JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED 19 (Wilfrid E. Rumble ed., 1995) (1832). Austin wrote, "[T]o say that human laws which conflict with the Divine law are not binding, that is to say, are not laws, is to talk stark nonsense." *Id.* at 158.

92. "The ideas of natural justice are regulated by no fixed standard: the ablest and the purest men have differed upon the subject . . ." *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 399 (1798) (Iredell, J., concurring); see FELDMAN, VOYAGE, *supra* note 12, at 85–90 (describing how the disagreements between abolitionists and proslavery advocates over the content of natural law and natural right contributed to the demise of natural law in America).

93. See FELDMAN, VOYAGE, *supra* note 12, at 93–94 (discussing the positivism of postbellum Langdellian legal scientists).

94. Oliver Wendell Holmes, Jr., *Natural Law*, 32 HARV. L. REV. 40 (1918), reprinted in The Essential Holmes 180, 181 (Richard A. Posner ed., 1992).

95. See STRAUSS, NATURAL, *supra* note 25, at 7–8 (discussing the modernist rejection of natural right); cf., FELDMAN, VOYAGE, *supra* note 12, at 91–136 (discussing the modernist approach to law).

96. STRAUSS, NATURAL, *supra* note 25, at 97.

97. *Id.* at 9–34.

interest,⁹⁸ Strauss sought to resurrect the common good. "Laws are just to the extent that they are conducive to the common good. But if the just is identical with the common good,"⁹⁹ he reasoned, "the just or right cannot be conventional: the conventions of a city cannot make good for the city what is, in fact, fatal for it and vice versa. The nature of things and not convention then determines in each case what is just."¹⁰⁰ Consequently, Strauss continued, the political activities of citizens and governmental officials should be virtuous, aiming for perfection and justice.¹⁰¹

B. Hannah Arendt

Despite the difficulty of deciphering Strauss's writings, Arendt's work might be even more complex. Like Strauss, Arendt criticized modernity in the shadow of the Holocaust.¹⁰² To Arendt, modernity generated danger: it not only rendered possible totalitarianism, Nazism, and the Holocaust, but also threatened the United States and its pluralist democratic system with risks unrecognized by most Americans.¹⁰³ Arendt maintained that modernity relegates humanity to a meaningless quest after the best instrumental means for achieving ultimately arbitrary ends.¹⁰⁴ A vacuous willingness to conform replaces a desire for genuine freedom.¹⁰⁵ Individuals dwell on self-interest and economic prosperity, while humanity celebrates the processes that produce specious historical progress.¹⁰⁶ People universally "demand . . . happiness,"¹⁰⁷ but suffer "the mass phenomenon of loneliness"¹⁰⁸ and "widespread unhappiness"¹⁰⁹ In short, Arendt argued that modernity drains away the juices that sustain human vitality and leaves a shriveled, moribund carcass. But unlike Strauss, Arendt concentrated less on the problems of modernity and more on a solution: politics. For Arendt, politics (or political action) could provide a cure for the ills of modernity: politics could be the source and the realm of meaningful human existence.¹¹⁰

98. See *id.* at 106–07.

99. *Id.* at 102.

100. See Tarcov & Pangle, *supra* note 25, at 920, 923–24 (discussing common good).

101. STRAUSS, NATURAL, *supra* note 25, at 133–34; STRAUSS, POLITICAL PHILOSOPHY, *supra* note 25, at 40, 94.

102. See ARENDT, ORIGINS, *supra* note 25, at vii–viii; MCGOWAN, *supra* note 25, at 3–5.

103. See MCGOWAN, *supra* note 25, at 15–17, 24, 38–39. According to Arendt, "[I]dentity has been disconnected from citizenship in modern society, with the result that we moderns have lost our sense of what politics is for. What characterizes the masses from whom totalitarian leaders derive their support is their lack of political commitment" *Id.* at 16. Arendt, in other words, emphasized the danger inherent in personal isolation and political apathy, which subsequent commentators would stress in describing the United States. ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 46–47, 107 (2000).

104. See VILLA, ARENDT, *supra* note 25, at 10–11.

105. ARENDT, HUMAN, *supra* note 25, at 40–41.

106. *Id.* at 33, 296–97; MCGOWAN, *supra* note 25, at 15–17, 36–38.

107. ARENDT, HUMAN, *supra* note 25, at 134.

108. *Id.* at 59.

109. *Id.* at 134.

110. *Id.* at 29–31.

What, then, is political action, according to Arendt? In modernity, we often associate politics with economic interests and disputes. For instance, a debate about whether to enact social welfare legislation that would provide food stamps for indigent individuals would be an archetypical political contest. But for Arendt, this debate would be social rather than political, where the social is a bastard combination of the private and public (political) spheres.¹¹¹ Arendt sought to maintain a sharp “division between the public and private realms, between the sphere of the polis and the sphere of household and family, and . . . between activities related to a common world and those related to the maintenance of life.”¹¹²

Arendt, in other words, narrowed the scope of politics. Indeed, critics have wryly noted that “Arendt rules out as nonpolitical almost everything we usually think of politics being ‘about.’”¹¹³ The precondition for politics, as Arendt conceptualized it, was plurality: “the fact that men, not Man, live on the earth and inhabit the world.”¹¹⁴ To be clear, Arendt emphasized a plurality or “diversity of opinions”¹¹⁵ rather than a plurality or “multiplicity of interests”¹¹⁶—where opinions refer to individual views of, for instance, the common good, and interests refer to individual or group desires or goals. And a community could not sustain the requisite plurality of opinions without protecting the “unique distinctness,” the individuality, of each person.¹¹⁷ “If men were not distinct, each human being distinguished from any other who is, was, or will ever be, they would need neither speech nor action to make themselves understood. Signs and sounds to communicate immediate, identical needs and wants would be enough.”¹¹⁸ Arendt explained that the medium of political action, the way that people can initiate and participate in politics, is by speaking.¹¹⁹ And it is through political speech—that is, political action—that “men distinguish themselves instead of being merely distinct; they are the modes in which human beings appear to each other, not indeed as physical objects, but qua men.”¹²⁰ In other words, political action is how one realizes his or her humanity—taking the initiative to be a unique

111. See *id.* at 27–29.

112. *Id.* at 28.

113. McGowan, *supra* note 25, at 75; see BERNSTEIN, *Rethinking*, *supra* note 25, at 248–49 (criticizing Arendt’s distinction of the political and the social).

114. ARENDT, *HUMAN*, *supra* note 25, at 7; see Kateb, *supra* note 25, at 14.

115. ARENDT, *REVOLUTION*, *supra* note 25, at 226.

116. *Id.*

117. ARENDT, *HUMAN*, *supra* note 25, at 176.

118. *Id.* at 175–76. Plurality also assumes a type of equality among individuals. KATEB, *supra* note 25, at 14.

119. ARENDT, *HUMAN*, *supra* note 25, at 26–27, 179; VILLA, ARENDT, *supra* note 25, at 31–35. Arendt, in effect, justifies the protection of free expression: “Opinions will rise wherever men communicate freely with one another and have the right to make their views public” ARENDT, *REVOLUTION*, *supra* note 25, at 227.

120. ARENDT, *HUMAN*, *supra* note 25, at 176.

person in meaningful coexistence with other unique persons.¹²¹ Arendt depicted the ancient Greek polis as illustrating a political or “public realm”:¹²² it “was reserved for individuality; it was the only place where men could show who they really and inexchangeably were.”¹²³ Plurality and individuality, then, are integrally intertwined. Plurality exists only when humans can realize or actualize their uniqueness, while unique individuality can be actualized only in relation to a plurality of others.¹²⁴ Conformity, it follows, obliterates the possibility for political action: “no formation of opinion is ever possible where all opinions have become the same.”¹²⁵

Political action, Arendt continued, not only “must be done in company with others,”¹²⁶ but also must be “for the sake of all.”¹²⁷ That is, through “the benefit of a multitude of opinions,”¹²⁸ a community can specify the “public spirit” or common good.¹²⁹ What, then, is the content of the common good? Arendt never answered this question with more than vague conundrums. She explained that political action “is not a means to some end beyond itself,”¹³⁰ and that “[t]o act politically is to talk about politics.”¹³¹ The common good, it would seem, equates with political action itself. To act politically is to achieve the common good. Thus, the creation, preservation, or both of a site facilitating political action would constitute the common good.¹³²

Humans can experience true freedom, Arendt maintained, only when they engage in political action. It is “a body politic which guarantees the space where freedom can appear.”¹³³ When we confound the political with the private and slide into the social—as we have in moder-

121. Arendt emphasized taking the initiative, an “impulse” to begin “something new.” *Id.* at 177; see ARENDT, *REVOLUTION*, *supra* note 25, at 216 (emphasizing “a deliberate act” as “the foundation of freedom”); *id.* at 223 (discussing “the spirit of the new”).

122. ARENDT, *HUMAN*, *supra* note 25, at 41.

123. *Id.* Arendt emphasized speech in describing politics in the Greek polis:

To be political, to live in a polis, meant that everything was decided through words and persuasion and not through force and violence. In Greek self-understanding, to force people by violence, to command rather than persuade, were prepolitical ways to deal with people characteristic of life outside the polis, of home and family life, where the household head ruled with uncontested, despotic powers, or of life in the barbarian empires of Asia, whose despotism was frequently likened to the organization of the household.

Id. at 26–27.

124. BERNSTEIN, *Judging*, *supra* note 25, at 223.

125. ARENDT, *REVOLUTION*, *supra* note 25, at 225.

126. KATEB, *supra* note 25, at 14.

127. *Id.*

128. ARENDT, *REVOLUTION*, *supra* note 25, at 225.

129. *Id.*

130. KATEB, *supra* note 25, at 16.

131. *Id.* at 17.

132. See ARENDT, *REVOLUTION*, *supra* note 25, at 255 (describing Thomas Jefferson’s desire for a ward system of government as emphasizing a public space or site for politics); KATEB, *supra* note 25, at 119 (discussing how “[t]he common interest is the preservation of the frame of action, a constitution”).

133. ARENDT, *REVOLUTION*, *supra* note 25, at 125.

nity—we tend to define freedom in accord with the social realm.¹³⁴ We think freedom is the pursuit, for instance, of economic prosperity. We believe freedom “requires and justifies” only “the restraint of political authority.”¹³⁵ Freedom becomes “located in the realm of the social, and force or violence becomes the monopoly of government.”¹³⁶ We forget that freedom lies in political action itself. Arendt insisted that freedom “means the right ‘to be a participator in government’, or it means nothing.”¹³⁷ Thus, freedom and politics are indivisible: “Freedom is a good valued for its own sake, not for anything it allows us to produce, gain, or achieve. And freedom is exercised only in [political] action.”¹³⁸

Arendt’s most sustained discussions of politics revolve around anti-theoretical examples: the combined actions of revolution and constitution making as prototypical political activities, on the one hand, and the imposition of totalitarianism, on the other. A revolution, Arendt argued, aims “to bring about the formation of a new body politic;”¹³⁹ it is when “the political way of life begins.”¹⁴⁰ Building “the foundation of a body politic which guarantees the space where freedom can appear,”¹⁴¹ a successful revolution establishes a “foundation of freedom”¹⁴² and demands “the constitution of a republic.”¹⁴³ The key to the triumphant American Revolution, then, was the drafting of constitutions in numerous states simultaneous with the issuance of the Declaration of Independence.¹⁴⁴

Under modern conditions, the act of foundation is identical with the framing of a constitution, and the calling of constitutional assemblies has quite rightly become the hallmark of revolution ever since the Declaration of Independence initiated the writings of constitutions for each of the American States, a process which prepared and culminated in the Constitution of the Union, the foundation of the United States.¹⁴⁵

Arendt underscored the nature of revolution and the narrowness of the political realm, as she conceptualized it, by comparing the American and French Revolutions. While the American Revolution succeeded largely because it concentrated on establishing a public space for freedom—that is, for political action—the French Revolution failed largely because it failed to do the same. The American revolutionaries included

134. ARENDT, HUMAN, *supra* note 25, at 30–31, 40.

135. *Id.* at 31.

136. *Id.*

137. ARENDT, REVOLUTION, *supra* note 25, at 218.

138. MCGOWAN, *supra* note 25, at 45.

139. ARENDT, REVOLUTION, *supra* note 25, at 35.

140. *Id.* at 33.

141. *Id.* at 125.

142. *Id.*

143. *Id.* at 33.

144. *Id.* at 141.

145. *Id.* at 125.

the poor, but these people, according to Arendt, were “not miserable.”¹⁴⁶ The French revolutionaries, though, needed to deal with an immense number of wretchedly impoverished people.¹⁴⁷ Consequently, during the French Revolution, the private and the social infected the political realm. And when a revolution tries to solve the social problem of poverty—the drive of the impoverished for basic needs—the opportunity to achieve political freedom is sacrificed to economic necessities.¹⁴⁸ “Nothing, we might say today, could be more obsolete than to attempt to liberate mankind from poverty by political means; nothing could be more futile and more dangerous. . . . The result was that necessity invaded the political realm, the only realm where men can be truly free.”¹⁴⁹ Indeed, Arendt insisted that the Framers of the United States Constitution erred by dwelling more on the creation for citizens of a private space for economic activities than a public space for political freedom.¹⁵⁰ American (national) government, for instance, operates through representatives, so citizens too frequently forget politics; they confuse economic liberty with political freedom.¹⁵¹ The people lose “the opportunity of being republicans and of acting as citizens.”¹⁵²

While the making (or defending) of a constitution exemplifies political action,¹⁵³ the imposition of totalitarian government contravenes politics and freedom.¹⁵⁴ Totalitarianism, Arendt explained, destroys plurality: in the political realm, individuals are isolated, and in the private realm, they are doomed to loneliness.¹⁵⁵ A totalitarian government dismantles both the public and private realms. “It is the very nature of totalitarian regimes to demand unlimited power. Such power can only be secured if literally all men, without a single exception, are reliably dominated in every aspect of their life.”¹⁵⁶ Hence, under totalitarian rule, the people endure “the experience of not belonging [t]o the world at all, which is among the most radical and desperate experiences of man.”¹⁵⁷ The epitome of totalitarianism is the concentration camp, where inmates suffer severe deprivation and isolation and can barely remember political freedom.¹⁵⁸ The inmates are forced to view survival as “the competition of

146. *Id.* at 68.

147. *Id.* at 67–68.

148. *Id.* at 113–14; BERNSTEIN, *Rethinking*, *supra* note 25, at 243–45.

149. ARENDT, *REVOLUTION*, *supra* note 25, at 114.

150. *Id.* at 253.

151. *Id.* at 268–69; KATEB, *supra* note 25, at 19.

152. ARENDT, *REVOLUTION*, *supra* note 25, at 253.

153. See KATEB, *supra* note 25, at 17 (discussing “the defense of a constitution or form against internal erosion or external attack”).

154. See ARENDT, *ORIGINS*, *supra* note 25, at 475, 478–79; MCGOWAN, *supra* note 25, at 29; VILLA, *POLITICS*, *supra* note 25, at 187–91.

155. ARENDT, *ORIGINS*, *supra* note 25, *id.* at 475; MCGOWAN, *supra* note 25, at 16.

156. ARENDT, *ORIGINS*, *supra* note 25, at 456.

157. *Id.* at 475.

158. See *id.* at 437–41; see also MCGOWAN, *supra* note 25, at 15–16, 29.

all against all, creating a highly atomized society.”¹⁵⁹ As Arendt concluded, “A life without speech and without action . . . is literally dead to the world; it has ceased to be a human life because it is no longer lived among men.”¹⁶⁰ A concentration-camp survivor, in Arendt’s words, literally “returns to the world of the living.”¹⁶¹

From Arendt’s perspective, as should now be clear, the deprivation of political freedom and action is catastrophic, even though she casts the scope of political action as extraordinarily narrow. Indeed, if one thinks in terms of republican and pluralist democracies, Arendt’s concept of politics is neither.¹⁶² Unlike republican democratic thinkers, who stressed the significance of having a relatively homogenous population, Arendt urged the importance of plurality, which obviously resonates with pluralist democracy. But unlike pluralist democratic theorists, Arendt repudiated a plurality of interests and instead emphasized a plurality of opinions. Like a republican democratic thinker, Arendt alluded to the common good, proclaiming that politics should aim to be “for the sake of all,”¹⁶³ but then she left us with a puzzling tautology, explaining that the common good equated with political action in pursuit of the common good.¹⁶⁴ Like a pluralist democratic theorist, Arendt favored “equal and full participation in the political,”¹⁶⁵ but then she rejected any pursuit of economic well-being in the political realm.¹⁶⁶ Arendt would admit that strategic and instrumental thinking might be appropriate in the social realm, but they are never acceptable in politics; thus, social science experts who might guide us in choosing the best means to achieve predetermined ends can never contribute to political action.¹⁶⁷ Ultimately, Arendt scorned pluralist democracy as a process-structured pursuit of self-interest:

Through pressure groups, lobbies, and other devices, the voters can indeed influence the actions of their representatives with respect to interest, that is, they can force their representatives to execute their wishes at the expense of the wishes and interests of other groups of voters. In all these instances the voter acts out of concern with his private life and well-being, and the residue of power he still holds in his hands resembles rather the reckless coercion with which a black-

159. MCGOWAN, *supra* note 25, at 16–17.

160. ARENDT, *HUMAN*, *supra* note 25, at 176; *see* VILLA, *POLITICS*, *supra* note 25, at 181–82 (emphasizing the uniqueness of totalitarianism).

161. ARENDT, *ORIGINS*, *supra* note 25, at 444.

162. *See* MCGOWAN, *supra* note 25, at 81 (discussing the difficulty of categorizing Arendt’s concept of political action).

163. KATEB, *supra* note 25, at 14.

164. Arendt is often criticized for emptying political speech of all significant content. *See* VILLA, ARENDT, *supra* note 25, at 36–40–41.

165. MCGOWAN, *supra* note 25, at 25.

166. *Id.* at 48–49; *cf. id.* at 48 (discussing general welfare as economic and thus not appropriate for political realm). Also, Arendt sometimes suggested that only those able or qualified to be political should be allowed to participate in political activity. VILLA, ARENDT, *supra* note 25, at 35, 39–40.

167. MCGOWAN, *supra* note 25, at 61; BERNSTEIN, *Rethinking*, *supra* note 25, at 253–54.

mailer forces his victim into obedience than the power that arises out of joint action and joint deliberation.¹⁶⁸

As Arendt peeled away elements of republican democracy and pluralist democracy, her goal emerged, however nebulously. She aimed to articulate a “pure politics,” an exhilarating communal connection among political actors.¹⁶⁹ Individuals engage in political speech or action solely for the purpose of creating and disclosing their meaningful identities to other individuals.¹⁷⁰ They seek to achieve no other ends because if they do quest after more, then they necessarily corrupt their political actions. When an individual pursues self-interest, acts instrumentally or strategically, or seeks economic or social justice, then he or she cannot actualize meaningful self-disclosure. The true person is obscured. “Without the disclosure of the agent in the act,”¹⁷¹ Arendt wrote, “action loses its specific character and becomes one form of achievement among others. It is then indeed no less a means to an end than making is a means to produce an object.”¹⁷² When the purity of politics is violated, then political “speech becomes indeed ‘mere talk,’ simply one more means toward the end, whether it serves to deceive the enemy or to dazzle everybody with propaganda.”¹⁷³ Thus, from Arendt’s standpoint, “*Nothing* justifies [political] action; *nothing* is gained or accomplished through action. Action is simply the embodiment, the realization, of freedom—and requires nothing further to be experienced as a good.”¹⁷⁴

But there is a problem: Arendt has refined politics to a point so microscopic that it has perhaps disappeared from view. The concrete occurrence of political action would seem to be “almost miraculous.”¹⁷⁵ In her effort to lead us toward a potentially exhilarating form of politics, she instead has led us to a utopian abyss.¹⁷⁶ If politics is neither the republican democratic pursuit of a substantive common good nor the pluralist democratic pursuit of self-interest, then what is it? Why would individuals engage in political speech, as limited by Arendt? What, exactly, would they talk about? Arendt would answer: individuals would speak to achieve self-disclosure. Maybe so, yet one must wonder: would Arendt’s notion of self-disclosure be enough to prompt political action in a real as opposed to a utopian world, or would it leave the political realm inert? Arendt wrote that the “revelatory quality of speech and action comes to

168. ARENDT, *REVOLUTION*, *supra* note 25, at 269.

169. KATEB, *supra* note 25, at 21.

170. In pure politics, “[a]lthough nobody knows whom he reveals when he discloses himself in deed or word, he must be willing to risk the disclosure.” ARENDT, *HUMAN*, *supra* note 25, at 180.

171. *Id.*

172. *Id.*

173. *Id.*

174. MCGOWAN, *supra* note 25, at 61 (emphasis added).

175. BERNSTEIN, *Rethinking*, *supra* note 25, at 243 (describing manifestations of the “revolutionary spirit” as “almost miraculous”).

176. See MCGOWAN, *supra* note 25, at 34.

the fore where people are *with* others and neither for nor against them—that is, in sheer human togetherness.”¹⁷⁷ Sheer human togetherness? Is Arendt, here, urging us toward political action or some type of unformulated communal ecstasy?¹⁷⁸

C. Eric Voegelin

Like Strauss and Arendt, Voegelin criticized modernity. He argued that individuals always view their respective societies as structured or ordered so as to be endowed “with meaning in terms of ends divine and human.”¹⁷⁹ Thus, individuals develop a “self-interpretation” that supposedly reflects the “cosmic order.”¹⁸⁰ The main problem with modernity, according to Voegelin, is that its roots are twisted around a cancerous misinterpretation of society vis-à-vis “the transcendent order of being.”¹⁸¹

In particular, modernity has developed askew because of an acceptance of “gnosticism.”¹⁸² In Voegelin’s terminology, gnosticism is the belief that a particular type of *knowledge* can enable an individual to attain salvation or deliverance (or escape an alienated existence). Put in different words, gnosticism is “a belief in the power of knowledge to transform reality, to create earthly perfection.”¹⁸³ Modernity evolved as gnostics adopted the concept of Christian (sacred) eschatology and applied it to the saeculum. Christian eschatology posited stages of spiritual advancement culminating in the City of God, but early modernists extended this sacral periodization of time into the secular realm.¹⁸⁴ The result was a belief in the modernist idea of progress: the conviction that human ingenuity could engender endless advancement in the material world, endless forward movement for humankind.¹⁸⁵

As Voegelin phrased it, the idea of “Christian transcendental [or eschatological] fulfilment” had become “immanentized”—brought within

177. ARENDT, *HUMAN*, *supra* note 25, at 180.

178. Arendt imagined political actors as if they stood behind some Rawlsian super-veil of ignorance. See JOHN RAWLS, *A THEORY OF JUSTICE* 136–42 (1971) (articulating Rawls’s veil of ignorance theory). Critics of Rawls questioned whether he had drained away the essence of humanity by positing that political actors forget their specific identities. See MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* 128–32 (1982); Joshua Cohen, *A More Democratic Liberalism*, 92 MICH. L. REV. 1503, 1513 (1994) (reviewing JOHN RAWLS, *POLITICAL LIBERALISM* (1993) [hereinafter RAWLS, *LIBERALISM*]). For Rawls’s attempt to reformulate his theory in response to his critics, see RAWLS, *LIBERALISM*, *supra*, at 22–28.

179. VOEGELIN, *ORDER*, *supra* note 25, at 19.

180. VOEGELIN, *NEW*, *supra* note 25, at 167.

181. *Id.*

182. *Id.* at 126.

183. MCALLISTER, *supra* note 25, at 21; see McKnight, *supra* note 25, at 60.

184. For a discussion of the Christian concept of eschatology and its adoption into modernist thinking, see HANS BLUMENBERG, *THE LEGITIMACY OF THE MODERN AGE* 37 (Robert M. Wallace trans., Mass. Inst. of Tech. 1983) (1966).

185. MCALLISTER, *supra* note 25, at 22–23; McKnight, *supra* note 25, at 59.

the reach of humans in "mundane existence."¹⁸⁶ And Voegelin here was insistent: "Such an immanentist hypostasis of the eschaton . . . is a theoretical *fallacy*."¹⁸⁷ In the perverted world of modernity, "man assumes God's role as the primary actor leading history to its culmination (*telos*), reason rather than revelation becomes the instrument for attaining saving knowledge, and concrete European nation-states become terrestrial paradises in which humanity finds the fulfillment of its highest aspirations."¹⁸⁸ In short, the modern world suffers from a spiritual disorder or pathology that confounds the sacred and the secular.¹⁸⁹

Of course, Voegelin explained, modernists do not recognize that their idea of progress arises from a perverted gnosticism. They believe that a conviction in progress rests firmly on a rational (and secular) ground. They convince themselves that humanity advances by questioning or doubting religion, but in reality, modernists have immanentized Christian concepts, applying them to the mundane world. Therefore, modernists are hubristic: they display excessive pride in their capabilities to achieve untold tasks that, in actuality, lie beyond their limited powers. Such hubris is most evident in the social sciences. Social scientists mistakenly assume that they can apply the methods of the natural sciences to gain objective knowledge of human society and politics.¹⁹⁰ But, Voegelin insisted, the insistent application of scientific method leads social scientists to skew their inquiries. Because they practice "value-free science," which maintains a dichotomy between facts and values,¹⁹¹ social scientists treat humans "as discrete objects," separated "from the transcendental context," from the spiritual realm.¹⁹² By necessity, social scientists limit their research goals to fit the constraints of their (scientific or empirical) method, and consequently, they must dismiss (as unscientific) any potential insights gleaned from other methods.¹⁹³

To be certain, the empiricism of scientific method produces some types of progress, but at a steep cost. We gain formal or instrumental rationality, but lose our substantive moorings. Voegelin wrote:

The death of the spirit is the price of progress. Nietzsche revealed this mystery of the Western apocalypse when he announced that God was dead and that He had been murdered. This Gnostic murder is constantly committed by the men who sacrifice God to [secular] civilization. The more fervently all human energies are thrown into the

186. VOEGELIN, NEW, *supra* note 25, at 120; McKnight, *supra* note 25, at 66.

187. VOEGELIN, NEW, *supra* note 25, at 120 (emphasis added).

188. McKnight, *supra* note 25, at 59.

189. See COOPER, *supra* note 25, at 136; MCALLISTER, *supra* note 25, at 169–71.

190. See McKnight, *supra* note 25, at 58–59.

191. MCALLISTER, *supra* note 25, at 173 (quoting Voegelin).

192. COOPER, *supra* note 25, at 67–70; MCALLISTER, *supra* note 25, at 173 (quoting Voegelin).

193. See COOPER, *supra* note 25, at 68; VOEGELIN, NEW, *supra* note 25, at 3–26; McKnight, *supra* note 25, at 55–56.

great enterprise of salvation through world-immanent action, the farther the human beings who engage in this enterprise move away from the life of the spirit. And since the life of the spirit is the source of order in man and society, the very success of a Gnostic civilization is the cause of its decline.¹⁹⁴

Thus, modernist societies are spiritually, religiously bankrupt. And to make matters worse, gnosticism encourages people to believe that mundane “ersatz realities” can fill the spiritual “vacuum.”¹⁹⁵ Modernist societies are, in a sense, “narcissistic”: they dwell on humans as the source of salvation (and progress).¹⁹⁶ Human inventiveness and ideas replace faith.¹⁹⁷ This narcissistic reliance on human ideologies, Voegelin lamented, has led to catastrophic modernist experiments in civilization, including not only Nazism and Communism but also liberalism and democracy.¹⁹⁸ “The closure of the soul in modern Gnosticism can repress the truth of the soul,” Voegelin wrote, “but it cannot remove the soul and its transcendence from the structure of reality.”¹⁹⁹

Even so, Voegelin still found that “there is a glimmer of hope” in our situation, though “it will require all our efforts to kindle this glimmer into a flame by repressing Gnostic corruption.”²⁰⁰ What must we do to defeat gnostic modernism? Return to the “divine ground of being”: we must comprehend the natural order of society.²⁰¹ For Voegelin, this return, this comprehension, requires a resurrected devotion to Christianity, which he deemed the best interpretation of God and experience.²⁰² Furthermore, Voegelin argued that, by recognizing the fundamental spiritual element of human existence, we could create a “new science of politics.”²⁰³ To do so, instead of blindly following empirical scientific method, we would need to specify the proper object of study and then develop and apply the best method for understanding that object.²⁰⁴ Given Voegelin’s focus on the spiritual, he drew on Aristotelian methodology to describe how people interpret (or self-interpret) the interrelated experiences of the secular and spiritual realms. By developing a “history of order”—a history of how various societies have structured or ordered themselves and have interpreted their “ends divine and human”—

194. VOEGELIN, NEW, *supra* note 25, at 131. In fact, Voegelin even criticized Strauss and Arendt for each using methods that reproduce gnostic modernism. See COOPER, *supra* note 25, at 132–39.

195. MCALLISTER, *supra* note 25, at 172 (quoting Voegelin).

196. *Id.* at 171 (quoting Voegelin).

197. *Id.* at 22.

198. See MCALLISTER, *supra* note 25, at 172–74; VOEGELIN, NEW, *supra* note 25, at 164–65, 173–74; see also NASH, *supra* note 25, at 74 (describing a trend of conservative critics of liberalism in the early 1950s).

199. VOEGELIN, NEW, *supra* note 25, at 165.

200. *Id.* at 189.

201. MCALLISTER, *supra* note 25, at 172.

202. *Id.* at 252; VOEGELIN, NEW, *supra* note 25, at 163–65.

203. VOEGELIN, NEW, *supra* note 25, at 3.

204. *Id.* at 4–5; COOPER, *supra* note 25, at 68; McKnight, *supra* note 25, at 55–56.

Voegelin believed that he could help humanity struggle toward a “true order.”²⁰⁵ Most important, this true order would entail a spiritual marshaling because, ultimately, “God and man, world and society form a primordial community of being.”²⁰⁶ To Voegelin, we need to grasp the significance of this intertwined existence of God and humanity and hold it tightly. For without spirituality, Voegelin warned, we are doomed to desolation.

II. THE INFLUENCE OF THE DISSENTERS

Pluralist democracy might be distasteful, with its emphasis on self-interest, its grounding on ethical relativism (tied to empiricism), and its excessive reliance on process. Any governmental system, it seems, must ultimately pursue substantive goals, which implicitly if not explicitly manifest certain values. Is pluralist democracy so bereft of foundational values that it might be unworkable and even dangerous in the long run, as all three political theorists feared? Strauss, Arendt, and Voegelin proffered diverse solutions: Strauss looked to ancient philosophy to provide foundational values; Voegelin believed religion could reconnect us to a spiritual order; and Arendt sought to purify politics of all corrupting forces at the outset. But despite their efforts, one is left with an uncomfortable conclusion: we cannot easily identify a practical alternative to pluralist democracy. Viewed together, Strauss, Arendt, and Voegelin demonstrate a crucial truth about our pluralist democratic world. The transition from republican to pluralist democracy cannot be undone.

Take Voegelin. Compared to Strauss and Arendt, Voegelin was “the mystic.”²⁰⁷ Political salvation, he maintained, lay in religious salvation. To restore “the forces of civilization,” we would need to return to a spiritually ordered society.²⁰⁸ And here lies the problem with Voegelin’s solution. With his emphasis on religion and, more specifically, on Christianity, he appeared to seek a resurrected “medieval order.”²⁰⁹ Unsurprisingly, then, his message appealed to a coterie of “Catholic, traditional conservatives,” but it could not captivate a more diverse group of American intellectuals.²¹⁰ And without doubt, most Americans could not abide a historical approach that equated Hitler and Harry Truman as practitioners of gnostic politics—regardless of whether many of those same Americans could believe that “[h]istory is a story told by God.”²¹¹ Meanwhile, according to Strauss, philosophy—especially ancient political philosophy—revealed a potential answer to the messy political maneuverings

205. VOEGELIN, *ORDER*, *supra* note 25, at 19.

206. *Id.* at 39.

207. MCALLISTER, *supra* note 25, at 222.

208. VOEGELIN, *NEW*, *supra* note 25, at 189.

209. VOEGELIN, *ORDER*, *supra* note 25, at 22.

210. MCALLISTER, *supra* note 25, at 252, 271, 297 n.1; NASH, *supra* note 25, at 536.

211. MCALLISTER, *supra* note 25, at 252; *see* NASH, *supra* note 25, at 74; VOEGELIN, *NEW*, *supra* note 25, at 170–73.

that infected modernity. He repudiated pluralist democracy and, like Voegelin, sought to lead us on "a return to origins." Whereas Voegelin sought to resurrect a medieval Christian order, Strauss sought to resurrect republican democracy. But Strauss's desired republican democratic regime could not skirt an overwhelming obstacle: it did not culturally and socially fit Strauss's twentieth-century world.²¹² Finally, Arendt, too, repudiated pluralist democracy, yet she refused to attempt the full reversal of direction necessary for a return to either a republican democratic regime or a Christian order.²¹³ Instead, she imaginatively tried to reconceptualize politics to avoid the pitfalls of both republican and pluralist democracies. For Arendt, politics rather than philosophy or religion provided the solution for the ills of modernity.²¹⁴ But Arendtian politics was so purified of the issues usually associated with political debate that one would be hard-pressed to find any practical implications for American government. In the end, despite Strauss's, Arendt's, and Voegelin's contrasting tendencies—Strauss favoring ancient philosophy; Arendt favoring politics; and Voegelin favoring religion—none of them was able to provide a ready alternative to pluralist democracy.²¹⁵

I do not mean to suggest, though, that the three were not influential. As mentioned, Voegelin, without exerting wide political pull, appealed to a handful of traditionalist conservatives. The sheer impenetrability of his writings undoubtedly dissuaded some other potentially sympathetic readers. Displaying an astounding erudition in philosophy, religion, and history, Voegelin was compelled to coin numerous terms and phrases to communicate his complex thoughts; to understand Voegelin, then, one needs to penetrate this unique vocabulary. For that reason, his expositors often include a glossary of Voegelinian terminology to enlighten wary readers.²¹⁶ Even so, despite the denseness of Voegelin's writings, *Time* remarkably featured him in a 1953 article,²¹⁷ but alas, frustrated magazine readers responded with letters condemning the article as "gobbledygook," "revolting," and "garbled nonsense."²¹⁸

Arendt, no easy read herself, claimed to focus more on politics than philosophy, yet her political theory had little connection to social reality.

212. See VILLA, ARENDT, *supra* note 25, at 8.

213. "While Arendt is unquestionably antimodern in a broad sense, she hardly shares the cultural conservative's wish to return to the premodern. Arendt refuses to deal in this type of nostalgia." *Id.* at 174. Yet, as Villa discusses, some commentators have characterized Arendt as also attempting to resurrect the civic republican tradition. VILLA, POLITICS, *supra* note 25, at 165–66.

214. See VILLA, POLITICS, *supra* note 25, at 155–56 (contrasting Strauss's turn to philosophy and Arendt's turn to politics).

215. The three thinkers, though, also overlapped significantly. For instance, Arendt might have favored politics, but she was an accomplished political philosopher. Voegelin might have favored religion, but his erudition on political philosophy was unsurpassed. Strauss might have favored ancient philosophy, yet he demonstrated great respect for religious traditions.

216. FEDERICI, *supra* note 25, at 207–36; EUGENE WEBB, ERIC VOEGELIN 277–89 (1981).

217. Max Ways, *Journalism and Joachim's Children*, TIME, Mar. 9, 1953, at 57–61.

218. FEDERICI, *supra* note 25, at xxiv, 192 n.8.

Consequently, her abstractions have not significantly swayed politicians or political advocates. Regardless, her writings have been heralded within the world of political theory.²¹⁹ Most notably, her conception of a pure politics influenced the German philosopher Jürgen Habermas's development of his renowned communication theory.²²⁰ Habermas posited the existence of an ideal speech situation: a counterfactual intersubjective encounter that is cleansed of domination, coercion, and other distortions arising from economic power and strategic maneuvering.²²¹ The ideal speech situation, as such, "makes possible unforced universal agreement."²²² A consensus that emerges from the ideal speech situation reflects only the force of the best argument and thus allows us to identify truth and normative legitimacy.²²³ Thus, just as Arendt aimed for a politics purified of extraneous considerations, Habermas aimed for communication purged of distorting material and strategic forces.²²⁴ Habermas then built on this theory of communicative action to articulate a discourse theory of democracy, grounded on his notion of an "ideal communication community."²²⁵

Strauss is unique, being the only of the three émigrés to have wielded substantial influence in the concrete world of American politics. Numerous neoconservatives have drawn sustenance from Strauss's thought. Of course, one should not mistake influence for intent. Strauss rarely wrote with the purpose of directly intervening in American political debates,²²⁶ though he was not apolitical. Despite the ambiguities in his writings, Strauss's imprimatur of the common good, virtue, and natural right manifested unmistakably conservative political leanings.²²⁷ He admitted that the pursuit of virtue and the common good might require the exclu-

219. MCGOWAN, *supra* note 25, at 98.

220. See Jürgen Habermas, *Hannah Arendt's Communications Concept of Power* (Thomas McCarthy trans.), reprinted in HANNAH ARENDT: CRITICAL ESSAYS 211, 212–14 (Lewis P. Hinchman & Sandra K. Hinchman eds., 1994) (tying Habermas's theory of communicative action to Arendt's political theory).

221. JÜRGEN HABERMAS, *What Is Universal Pragmatics?*, in COMMUNICATION AND THE EVOLUTION OF SOCIETY 1, 105–10 (Thomas McCarthy trans., 1979).

222. Jürgen Habermas, *The Hermeneutic Claim to Universality*, in JOSEF BLEICHER, CONTEMPORARY HERMENEUTICS 181, 206 (1980).

223. *Id.* According to Habermas, "all speech acts oriented to reaching understanding" presuppose the validity claims of sincerity, truth, and normative legitimacy. JÜRGEN HABERMAS, REASON AND THE RATIONALIZATION OF SOCIETY 307 (1984) (emphasis added). We presuppose, in other words, that speakers sincerely assert the truth and normative legitimacy or rightness of their propositions. *Id.*

224. See Stephen M. Feldman, *The Problem of Critique: Triangulating Habermas, Derrida, and Gadamer Within Metamodernism*, 4 CONTEMP. POL. THEORY 296, 308 (2005).

225. JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY 322 (William Rehg trans., 1996). See generally Feldman, *supra* note 224 (discussing Habermas more extensively in conjunction with Gadamer and Derrida).

226. See MCALLISTER, *supra* note 25, at 221.

227. See PANGLE, *supra* note 25, at 83–85; cf. DRURY, *supra* note 25, at xi (noting that even Strauss's students disagree about his meaning); STRAUSS, LIBERALISM, *supra* note 25, at v–viii (discussing the difficulty of even defining liberalism and conservatism).

sion of some individuals from the polity,²²⁸ as well as the coercive control of others. An individual “cannot achieve the perfection of his humanity,”²²⁹ cannot be virtuous, “except by keeping down his lower impulses.”²³⁰ To control such lower impulses, Strauss argued, sometimes demands coercion. Hence, rather than stressing the maximization of freedom and autonomy, Strauss suggested that coercion sometimes amounts to the common good. “Justice and coercion are not mutually exclusive; in fact, it is not altogether wrong to describe justice as a kind of benevolent coercion. Justice and virtue in general are necessarily a kind of power. To say that power as such is evil or corrupting would therefore amount to saying that virtue is evil or corrupting.”²³¹ In light of such sentiments, Strauss inclined predictably toward other conservative outlooks. He was adamantly anti-communist²³² and was far more elitist than egalitarian, stressing that not everyone is equally virtuous.²³³ On this point, Strauss’s notion of political practice can be fruitfully contrasted with that advocated by Arendt.

For Arendt, a healthy politics is an agonistic politics of open, never-ending debate; a politics that takes place in a public realm free of force and coercion, upon a ‘stage’ suitable for the expression of human plurality and civic equality. For Strauss, a healthy politics is one in which the gentry or gentlemen rule; in which the passions of the *demos* are restrained by the virtues of their betters; in which enough order and freedom are present for the pursuit of philosophy; and in which philosophers can stand as potential ‘umpires’ over political-moral disputes.²³⁴

Regardless of Strauss’s intentions and the sparseness of his overtly political writings, he has wielded considerable sway as the so-called “godfather” of neoconservatism.²³⁵ Neocons such as Irving Kristol and Allan Bloom echoed Straussian themes with their attacks on the ethical relativism of modernity and the substantive vacuity of pluralist democracy.²³⁶ They called for a renewed “moral clarity” that harkened back to the

228. See STRAUSS, *NATURAL*, *supra* note 25, at 130–32.

229. *Id.* at 132.

230. *Id.* at 132–33.

231. *Id.* at 133.

232. Tarcov & Pangle, *supra* note 25, at 933. “[I]t could no longer be denied that Communism will remain, as long as it lasts in fact and not merely in name, the iron rule of a tyrant” STRAUSS, *CITY*, *supra* note 25, at 5.

233. STRAUSS, *NATURAL*, *supra* note 25, at 134–35, 140–1. The masses form and follow opinions, but the elite seek the truth. See *id.* at 12.

234. VILLA, *POLITICS*, *supra* note 25, at 156. George Kateb categorizes Arendt as being hyper-democratic, wanting more democracy. KATEB, *QUESTIONABLE*, *supra* note 25, at 30. Kateb categorizes Strauss as being “antidemocratic” and “authoritarian” *Id.* at 39.

235. DOUGLAS MURRAY, *NEOCONSERVATISM: WHY WE NEED IT* 30 (2006).

236. E.g., ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 38–39 (1987) (attacking relativism).

republican democratic concepts of virtue and the common good.²³⁷ They denounced liberal social engineering programs, such as affirmative action, as being grounded on falsities propagated by hubristic social scientists.²³⁸ Moreover, because the neocons exerted political power during Republican presidencies, several neoconservative oriented Justices have been appointed to the Supreme Court and have subsequently brought neoconservative themes to bear in their decisions and opinions, especially those related to constitutional jurisprudence.²³⁹ The now standard conservative invocation of originalism denotes a desire to return to a pre-1937 republican democratic style of judicial review. For instance, the neoconservative emphasis on virtue and moral clarity has surfaced in several free expression-religious freedom cases where the Court has required the government to provide funding or public building access to organizations spreading religious messages.²⁴⁰ In the Establishment Clause context, neoconservative Justices, such as Clarence Thomas and Antonin Scalia, have attacked the 'wall' metaphor, which suggests that church and state are strictly separated. Maintaining that the wall metaphor is too hostile to religious values, they instead have advocated for non-preferentialism: the government, according to this viewpoint, cannot prefer one religion over another but otherwise can favor religion over irreligion.²⁴¹ Supposedly following an originalist approach, Thomas has gone so far as to argue that state and local governments should be constitutionally permitted to establish religion.²⁴² In short, while pluralist democracy remains predominant, the émigrés' dissenting voices have made (and continue to make) their marks in American political thought and government.

237. See, e.g., William Kristol, *Postscript—June 2004: Neoconservatism Remains the Bedrock of U.S. Foreign Policy* (2004), reprinted in *THE NEOCON READER* 75, 75 (Irwin Stelzer ed., 2004); Murray, *supra* note 235, at 46; IRVING KRISTOL, *NEOCONSERVATISM: THE AUTOBIOGRAPHY OF AN IDEA* 238, 247–48 (1995) (invoking republican democratic concepts).

238. NATHAN GLAZER, *AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY* (Basic Books 1978) (1975).

239. Stephen M. Feldman, *Conservative Eras in Supreme Court Decision Making: Employment Division v. Smith, Judicial Restraint, and Neoconservatism*, 32 *CARDOZO L. REV.* 1791, 1803 (2011) (discussing Justices Scalia, Thomas, Alito, and Roberts as neoconservative Justices).

240. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 102–03, 111–12 (2001); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 822–23, 840–45 (1995).

241. E.g., *Capitol Square Review & Advisory Board v. Pinette*, 515 U.S. 753, 757–60, 769 (1995) (holding, with Scalia majority opinion, that the private display of a large Christian cross on public property did not violate establishment clause); see Robert H. Bork, *Slouching Towards Gomorrah* 289 (1996) (explaining non-preferentialism).

242. *Rosenberger*, 515 U.S. at 852–55 (Thomas, J., concurring).

